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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,703	03/19/2007	Noel N. De Keyzer	L0014/US	2221

7590 10/29/2008
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EXAMINER

SCOTT, ANGELA C

ART UNIT	PAPER NUMBER
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1796

MAIL DATE	DELIVERY MODE
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10/29/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/589,703	Applicant(s) DE KEYZER ET AL.	
	Examiner Angela C. Scott	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response of July 17, 2008 has been fully considered. Claims 8-21 are pending.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Keyzer et al. (WO 02/057386).

Regarding claims 8-12: De Keyzer et al. teaches an adhesive composition (pg. 1 line 2) comprising 100 parts by weight of a block copolymer (pg. 8 lines 4-6) having a structure represented by A-C-A wherein A represents a polymer block of an aromatic vinyl compound and C is a mixed polymer block of butadiene and isoprene (page 4 lines 9-15) in a weight ratio of 1:1 (3a on table on page 15), which falls within the claimed range. The aromatic vinyl compound is preferably styrene (pg. 4 lines 20-25). The coupling efficiency is from 81-87 % (pg. 19 table 2). The composition additionally comprises from 100-300 parts by weight (pg. 8 lines 28-3) of a hydrocarbon tackifying resin (pg. 8 line 9), specifically 250 parts (pg. 28 table 9), from 5 to 150 parts by weight of a plasticizer (pg. 9 lines 16-20), and from 1 to 3 parts by weight (tables 9-12) of one or more auxiliaries such as antioxidants and other stabilizing ingredients (pg. 9 lines 29-32). Further taught is the vinyl content in butadiene is 8 weight percent and the vinyl content in isoprene is 5 weight percent (pg. 19 table 2) and the polystyrene content is 30 wt% (pg. 19 table 2 "F").

The block copolymers according to the present invention each preferably have a weight average molecular weight ranging from 100,000 to 500,000 (pg. 5 lines 7-8). Not disclosed is the molecular weight of 124,000-145,000. However, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. See *In re Aller*, 105 USPQ 233 and MPEP 2144.05. At the time of the invention a person having ordinary skill in the art would have found it obvious to optimize the molecular weight of the copolymer and would have been motivated to

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do so for such desirable properties as a cured product with sufficient flexibility and adhesiveness. A prima facie case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. See *In re Boesch and Slaney*, 205 USPQ 215.

Claims 13-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Keyzer et al. (WO 02/057386).

Regarding claims 13-18: De Keyzer et al. teaches disposable soft goods, such as diapers, feminine care articles and surgical drapes (pg. 1 lines 10-14), which have a non-woven element (disposable diapers have these) and they are assembled using a hot melt adhesive composition (pg. 1 lines 10-14). The adhesive composition comprises 100 parts by weight of a block copolymer (pg. 8 lines 4-6) having a structure represented by A-C-A wherein A represents a polymer block of an aromatic vinyl compound and C is a mixed polymer block of butadiene and isoprene (page 4 lines 9-15) in a weight ratio of 1:1 (3a on table on page 15), which falls within the claimed range. The aromatic vinyl compound is preferably styrene (pg. 4 lines 20-25). The coupling efficiency is from 81-87 % (pg. 19 table 2). The composition additionally comprises from 100-300 parts by weight (pg. 8 lines 28-3) of a hydrocarbon tackifying resin (pg. 8 line 9), specifically 250 parts (pg. 28 table 9), from 5 to 150 parts by weight of a plasticizer (pg. 9 lines 16-20), and from 1 to 3 parts by weight (tables 9-12) of one or more auxiliaries such as antioxidants and other stabilizing ingredients (pg. 9 lines 29-32). Further taught is the vinyl content in butadiene is 8 weight percent and the vinyl content in isoprene is 5 weight percent (pg. 19 table 2) and the polystyrene content is 30 wt% (pg. 19 table 2 "F").

The block copolymers according to the present invention each preferably have a weight average molecular weight ranging from 100,000 to 500,000 (pg. 5 lines 7-8). Not disclosed is the molecular weight of 124,000-145,000. However, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. See *In re Aller*, 105 USPQ 233 and MPEP 2144.05. At the time of the invention a person having ordinary skill in the art would have found it obvious to optimize the molecular weight of the copolymer and would have been motivated to do so for such desirable properties as a cured product with sufficient flexibility and adhesiveness.

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A prima facie case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. See *In re Boesch and Slaney*, 205 USPQ 215.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Keyzer et al. (WO 02/057386).

Regarding claims 19-21: De Keyzer et al. teaches the block copolymers having a structure represented by A-C-A wherein A represents a polymer block of an aromatic vinyl compound and C is a mixed polymer block of butadiene and isoprene (page 4 lines 9-15) in a weight ratio of 1:1 (3a on table on page 15), which falls within the claimed range. The aromatic vinyl compound is preferably styrene (pg. 4 lines 20-25). The coupling efficiency is from 81-87 % (pg. 19 table 2). Further taught is the vinyl content in butadiene is 8 weight percent and the vinyl content in isoprene is 5 weight percent (pg. 19 table 2) and the polystyrene content is 30 wt% (pg. 19 table 2 "F").

The block copolymers according to the present invention each preferably have a weight average molecular weight ranging from 100,000 to 500,000 (pg. 5 lines 7-8). Not disclosed is the molecular weight of 124,000-145,000. However, the experimental modification of this prior art in order to ascertain optimum operating conditions fails to render applicants' claims patentable in the absence of unexpected results. See *In re Aller*, 105 USPQ 233 and MPEP 2144.05. At the time of the invention a person having ordinary skill in the art would have found it obvious to optimize the molecular weight of the copolymer and would have been motivated to do so for such desirable properties as a cured product with sufficient flexibility and adhesiveness. A prima facie case of obviousness may be rebutted, however, where the results of the optimizing variable, which is known to be result-effective, are unexpectedly good. See *In re Boesch and Slaney*, 205 USPQ 215.

Response to Arguments

Applicant's arguments filed July 17, 2008 have been fully considered but they are not persuasive.

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In response to applicant's argument that unexpected results occur to the viscosity of the polymer within the claimed molecular weight range, this argument is found unpersuasive. Case law holds that whether the unexpected results are the result of unexpectedly improved results or a property not taught by the prior art, the "objective evidence of nonobviousness must be commensurate in scope with the claims which the evidence is offered to support." In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range (i.e., scope). *In re Clemens*, 622 F.2d 1029, 1036, 206 USPQ 289, 296 (CCPA 1980), MPEP 716.02(d). In this case, the examples provided as evidence of unexpected results did not show the results over the entire claimed range of the ingredients. For example, 250 parts by weight of a tackifying resin was used in the examples whereas up to 300 parts by weight were claimed. Moreover, to establish unexpected results over a claimed range, applicants should compare a sufficient number of tests both inside and outside the claimed range to show the criticality of the claimed range. *In re Hill*, 284 F.2d 955, 128 USPQ 197 (CCPA 1960).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela C. Scott whose telephone number is (571) 270-3303. The examiner can normally be reached on Monday through Friday, 8:30am to 5:00pm EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Eashoo can be reached on (571) 272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Eashoo, Ph.D./
Supervisory Patent Examiner, Art Unit 1796

/A. C. S./
Examiner, Art Unit 1796